

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL
501 AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent,

STATION GVR ACQUISITION, LLC
d/b/a GREEN VALLEY RANCH
RESORT SPA CASINO,

Intervenor.

Case No. 18-71124

NLRB Case 28-CA-214925

STATION GVR ACQUISITION, LLC
d/b/a GREEN VALLEY RANCH
RESORT SPA CASINO,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

Case No. 18-72079

NLRB Case 28-CA-214925

NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

v.

STATION GVR ACQUISITION, LLC
d/b/a GREEN VALLEY RANCH
RESORT SPA CASINO,

Respondent.

Case No. 18-72121

NLRB Case 28-CA-214925

INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 501,
AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

Case No. 19-70092

NLRB Case 28-CA-225263

NP SUNSET LLC, d/b/a SUNSET
STATION HOTEL CASINO,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent,

INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 501,
AFL-CIO,

Proposed Intervenor.

Case No. 19-70244

NLRB Case 28-CA-225263

NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

v.

NP SUNSET LLC, d/b/a SUNSET
STATION HOTEL CASINO,

Respondent,

INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 501,
AFL-CIO,

Proposed Intervenor.

Case No. 19-70279

NLRB Case 28-CA-225263

MOTION TO CONSOLIDATE CASES

1. This is a motion by the International Union of Operating Engineers Local 501 to consolidate these cases for briefing and oral argument. The grounds are stated below:

2. Local 501 is the Petitioner in Case No. 19-70092 and 18-71124. It is the Intervenor in the remainder of the cases.

3. These cases involve refusals by the employers to bargain with the Union after the National Labor Relations Board issued a Certification of Representative and after the employers refused to bargain. These are what are known as “test of certification” cases.

4. In Cases 18-71124, 18-72029 and 18-72121, the Court is asked to review a Decision of the Board reported at 366 NLRB No. 58 (2018). They have been consolidated.

5. In Cases 19-70092, 19-70244 and 19-70279, the Court is asked to review a Decision of the Board reported at 367 NLRB No. 62 (2019). They have been consolidated.

6. These Decisions of the National Labor Relations Board involve precisely the same issue: whether slot technicians are guards within the meaning of 29 U.S.C. § 159(b)(3) or whether they are not.

7. The Respondent employers, although different employer entities are all owned by the same parent corporation. The parent corporation is Red Rock Resorts, Inc., a publicly traded company.

8. NP Sunset LLC operates a resort, spa and casino located in Henderson, Nevada. It is known as “Sunset Station Hotel & Casino.”

9. Station GVR Acquisition, LLC operates a resort, spa and casino in Henderson, Nevada. It is known as “Green Valley Ranch Resort Spa Casino.”

10. There is no difference between the facts and legal issues in any of these cases. They involve the same classification of employees, slot technicians, the same employer through the parent corporation, the same factual circumstances underlying the duties of slot technicians, the same attorneys on all sides and the same Court. Consolidation is warranted for purposes of ensuring a consistent application of the law and presentation of the cases to the same panel.

11. There is a pending Motion to Transfer Case Nos. 18-71124 to the District of Columbia Circuit. That Motion was made by the employer on the ground that there is a related pending case in the D.C. Circuit. Although related, the case in the D.C. Circuit involves a subsequent Board Order in the first case involving Station GVR Acquisition. It involves a refusal by the employer to provide information. That case wholly depends upon the outcome of the test of certification case in Cases 18-71124, *et al.* pending before this Court.

12. The filing of the more recent case involving the same issues, the same ultimate employer and the same parties should weigh heavily in favor of denying that Motion to Transfer. If the Motion to Transfer is granted, the cases with the same facts and issues will be pending in two Circuit Courts with the possibility of conflicting opinions and outcomes. There is now even more reason to deny the Motion to Transfer which is opposed by Local 501 and the Board because of the pendency of the new cases.

13. For the reasons suggested above, the Motion to Transfer pending in Cases 18-71124, *et al.* should be denied. The pending cases should be

consolidated for purposes of briefing and oral argument in order to ensure a uniformity of treatment of the same issue in this Court.

Dated: February 20, 2019

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ David A. Rosenfeld
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CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on February 20, 2019, I electronically filed the foregoing **MOTION TO CONSOLIDATE CASES** with the United States Court of Appeals for the Ninth Circuit, by using the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by the Court's CM/ECF system.

I certify under penalty of perjury that the above is true and correct.
Executed at Alameda, California, on February 20, 2019.

/s/ Karen Kempler
Karen Kempler